

REMARKS

It is noted that the indicated allowability of claims 1 and 4-7 has been withdrawn in view newly discovered references, U.S. Patent Nos. 5,620,412 and 4,481,941. It is also noted that claims 2, 3, and 9, although rejected to as being dependent upon a rejected base claim, would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1 and 6-8 have been rejected by the Examiner under 35 USC 102(b) as being anticipated by U.S. Patent No. 5,620,412 to Modglin. Also, claims 1, 4 and 5 have been rejected by the Examiner under 35 USC 102(b) as being anticipated by U.S. Patent 4,481,941 to Rolfes. These rejections are respectfully traversed.

The present invention is directed to a device for protecting the back (spinal cord) of the user. In rejecting the claims of the present application, the Examiner relies upon U.S. Patent 5, 620,412 to Modglin and U.S. Patent 4,481,941 to Rolfes. However, in referring to both of the references relied upon by the Examiner, it is clear that these references could not possibly contemplate the problems recognized by the Applicant in connection with protecting the back and spinal cord of a human, and accordingly, not recognizing the Applicant's problems, could not possibly suggest the Applicant's solution to said problems. It should be readily apparent to the Examiner that problems associated with hip abduction and hip stabilization certainly could not be considered equivalent to the problems associated with

protecting the back and spinal cord with a back protector such as that defined by the claims of the present application. Thus, for example, in referring to Fig. 2 of the Modglin patent, a hinge 22 is provided to connect the upper support with the lower support. However, since the referenced patent is concerned with a hip abduction system, the hinge must pivot only laterally, that is, in the walking direction of the user, since the purpose of the device is to provide an orthopedic support and hip-joint stabilization while walking. On the other hand, since the device of the present invention is directed to a back protector, wherein the hinging of the lower support to the upper support is adapted to conform to the normal movements of the spinal column, and, as such, is capable of hinging in a plurality of directions and not merely to a front-to-back direction as is the case in the Modglin patent. The Rolfes patent suffers from a similar deficiency in that its hinging structure is also, and logically so, confined to the same type of lateral movement as is the case in the Modglin patent. This being said, it is clear that the particular use of the device of the present invention, that is, one directed to protecting the back and the spinal cord, dictates the particular structure defined by the claims of the present application and this structure is not even remotely suggested by the references relied upon by the Examiner. In this connection, it should be noted that claim 1 has been amended to recite that the upper and lower supports are adapted to conform to the upper and lower regions of the back of a user. This expression, by definition, defines over the devices of both the Modglin and Rolfes patents since neither of those devices in any manner conform to the upper and lower

regions of the back of a user. Furthermore, claims 10-15 have been added to the present application, all of these claims further defining the structure of the present invention as to how it relates to a human spinal column. Thus, neither the Modglin or Rolfes patent relates to a back protector wherein upper and lower supports are adapted to conform to a human spinal column as recited in claim 10. Similarly, the hinging system which supports the upper and lower supports of the devices in the referenced patents are not hinged together to move relative to the movement of the human spinal cord as recited in claim 11. Also, none of the supports recited in the referenced patents define upper or lower supports wherein a plurality of adjacent plates are hinged together as recited in newly added claim 12 of the present application. Similarly, the hip stabilization devices of the referenced patents are not capable of flexing laterally and in the anterior and posterior directions to support the spinal cord as recited in newly added claim 13 of the present application. Newly added claims 14 and 15 merely recite a more detailed structure of the back protector of the present invention which includes a plurality of layers and various hinging relationships which are certainly not contemplated by the references relied upon by the Examiner.

In view of the many deficiencies pointed out here and above in connection with the references relied upon by the Examiner, it is the Applicant's position that the Examiner is attempting to reconstruct the teachings of the references in view of the Applicant's own disclosure. Even in attempting a reconstruction of the references, because both of the reference

patents are concerned with hip stabilization, any reconstruction attempted by the Examiner cannot possibly solve the problems solved by the back protector of the present invention. Accordingly, in view of the above amendments and remarks, reconsideration of the rejections and allowance of claims 1-15 of the present application is respectfully requested.

Conclusion

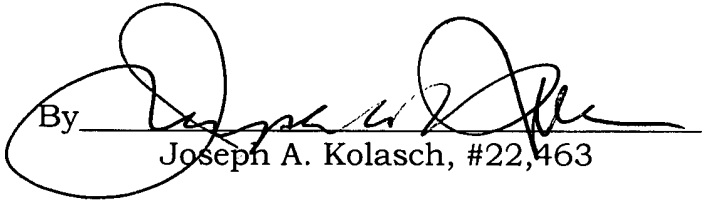
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Mr. Joseph A. Kolasch (Reg. No. 22,463) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By


Joseph A. Kolasch, #22,463

JAK/njp

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000